IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 21, 2009 Session

STATE OF TENNESSEE v. DAVID MARTIN OLSON

Appeal from the Circuit Court for Williamson County
No. I-CR071211 Robbie T. Beal, Judge

No. M2008-01164-CCA-R3-CD - Filed December 10, 2009

Appellant, David Martin Olson, was indicted by the Williamson County Grand Jury for one count of possession of a controlled substance for resale, one count of evading arrest, one count of reckless endangerment, one count of possession of a controlled substance, and one count of drug paraphernalia, following his refusal to pull over for a pursuing officer and subsequent search of both his person and tractor-trailer. After the dismissal of four attorneys, Appellant represented himself at a jury trial. At the conclusion of the trial, the jury convicted Appellant of possession of a controlled substance for sale or delivery, evading arrest, possession of a controlled substance, and possession of drug paraphernalia. The trial court sentenced Appellant to an effective sentence of five years. On appeal, Appellant challenges: the trial court's conclusion that Appellant was waiving his right to counsel and wanted to represent himself at trial; whether the evidence was sufficient to support his conviction of possession of methamphetamine with intent to sell or deliver; whether the trial court properly acted as the thirteenth juror with regard to his conviction of possession of methamphetamine; whether the trial court erred in denying his motion for arrest of judgment with regard to his conviction of evading arrest; and whether the trial court erred in denying his motion for a new trial based on the cumulative effect of errors made by the trial court. We have concluded that: none of Appellant's Constitutional rights were violated relating to his self-representation at trial; the evidence was sufficient to support his conviction of possession of methamphetamine with intent to sell or deliver; the trial court properly acted as the thirteenth juror; Appellant waived his issue with regard to his challenge of the denial of his motion for arrest of judgment for failure to cite to the record or authority to support his argument; and the trial court did not err in denying the motion for new trial. Therefore, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court are Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Samuel B. Dreiling, Franklin, Tennessee, for the Appellant, David Martin Olson.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Ron Davis, District Attorney General, and Kim Helper, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On May 17, 2005, Deputy Deborah Rogers with the Williamson County Sheriff's Office was patrolling Interstate 40 between exits 182 and 179. She was parked in the interstate turnaround facing eastbound. A woman in a vehicle approached from the east and stopped to speak with Deputy Rogers. The woman informed Deputy Rogers that a tractor-trailer was traveling on the eastbound side of Interstate 40 and was swerving all over the road. The woman told Deputy Rogers that the truck almost hit her five or six times. While they were speaking, the woman pointed out a tractor-trailer traveling east as the vehicle about which she was complaining. Deputy Rogers looked up and saw the tractor-trailer come into Williamson County. It was over the centerline as it entered Williamson County. She immediately drove out to follow the tractor-trailer.

Deputy Rogers caught up to the tractor-trailer and began to follow it. While she was following it, she saw the tractor-trailer drift over the center line a couple of times and even drift over the fog line on the right shoulder. The tractor-trailer was in Williamson County at the time. She initiated her lights with an intent to pull the tractor-trailer over near mile marker 183. The tractor-trailer did not pull over to the side of the road. Deputy Rogers positioned herself at the tractor-trailer's left rear corner. She could see the driver's face in the mirror and saw him look back towards her at least two times. When she saw him look into the mirror, she attempted to shine the spotlight in the mirror to signal him to pull over to the side. At one point, she attempted to drive beside him, but the tractor-trailer swerved and she believed she was in danger. She remained at the back of the vehicle at that point. Deputy Rogers was concerned about the safety of other motorists because it was around 1:45 in the afternoon and the tractor-trailer was headed towards Nashville.

The tractor-trailer pulled over at exit 188. Exit 188 is outside of Williamson County, but Deputy Rogers had chased the tractor-trailer from its entry into Williamson County, through the county, until it finally stopped at Exit 188. He had refused to pull over for over five miles. The driver pulled off short of the exit. When Deputy Rogers pulled up behind him, he began to inch forward and started down the exit ramp. At some point, the driver jutted the cab off to one side, and Deputy Rogers was able to pull up so that her car was facing the cab.

Appellant, the driver of the tractor-trailer got out of the cab. When he got out, he was hiding one hand behind his back. Deputy Rogers was concerned that Appellant was holding a weapon behind his back. After shouting "Show me your hands" a few times, Appellant held up his hands. She placed handcuffs on Appellant at that time. Deputy Rogers was concerned because Appellant

"had a grinding motion with his jaw. He had a tense look in [ ] his eyes." Deputy Rogers searched Appellant after she handcuffed him to look for weapons. She found a tin box in his right front pocket. Inside the box she found a little glass bottle of a crystal substance and a glass smoke pipe. The TBI lab later confirmed that the crystal substance was methamphetamine. The methamphetamine weighed .8 grams. Appellant told Deputy Rogers that the methamphetamine was not his and that he was taking it to his father. Appellant also had $258 in his pocket.

Deputy Rogers's partner, Deputy Ryan, arrived at the scene. He searched the cab of the tractor-trailer. He found a bottle of Darvocet with no prescription label. Appellant was arrested for his reckless driving, evading arrest, and his possession of methamphetamine and Darvocet. Deputy Ryan also found 26 pseudoephedrine tablets which are used to make methamphetamine.

In July 2005, the Williamson County Grand Jury indicted Appellant for one count of possession of a controlled substance for resale, one count of evading arrest, one count of reckless endangerment, one count of possession of a controlled substance, and one count of drug paraphernalia. Appellant retained an attorney. After the attorney was allowed to withdraw, the trial court appointed three successive attorneys to represent Appellant. All three attorneys were unsatisfactory to Appellant. At trial, held May 31 and June 1, 2007, Appellant represented himself. The jury found Appellant guilty of each charge except for the charge of reckless endangerment. In a separate sentencing hearing held August 21, 2007, Appellant was sentenced to an effective sentence of five years. On June 12, 2007, Appellant filed a pro se motion for new trial. After the appointment of still another attorney, an amended motion for new trial was filed on March 3, 2008. On May 13, 2008, the trial court denied the motion. Appellant filed a timely notice of appeal.

ANALYSIS

Waiver of Counsel

Appellant makes several arguments challenging the trial court's granting of his motion to have counsel withdraw and the court's requirement that Appellant represent himself. Appellant argues that his in-court statements did not constitute a valid waiver of counsel, his forced representation of himself constituted a violation of his right to due process under the Fourteenth Amendment to the United States Constitution, and his forced representation of himself violated his right to counsel under the Sixth Amendment to the United States Constitution. The State initially argues that Appellant has waived this issue on review because Appellant failed to cite to the record. In the alternative, the State argues that the record supports the trial court's actions.

We agree with the State that Appellant has failed to cite to the record in his arguments regarding this issue. Rule 27(a)(7) of the Tennessee Rules of Appellate Procedure provides that a brief shall contain "[an] argument . . . setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on." Tennessee Court of Criminal Appeals Rule 10(b) states that "[i]ssues which are not supported

by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court." *See also State v. Sanders*, 842 S.W.2d 257, 259 (Tenn. Crim. App. 1992) (determining that issue was waived where defendant cited no authority to support his complaint). Although the failure to cite to the record is a basis for waiver, we choose to address this issue on the merits.

On March 23, 2006, Appellant's first trial counsel filed a motion to withdraw. On April 4, 2006, the trial court heard from the parties on the motion to withdraw. Appellant initially stated that he was attempting to hire an attorney, but later in the proceedings stated that he was indigent. Appellant's first trial counsel agreed that Appellant had not paid for his services. The State expressed concerns about the delay in trial because the trial had been originally set for December 13, 2005. The trial court granted the motion to withdraw and informed Appellant that counsel would be appointed. On the date the trial court heard the motion to withdraw, the trial court was supposed to hear a motion to suppress in Appellant's case and trial was set for later in the week.

The trial court appointed an attorney from the public defender's office. On September 15, 2006, Appellant filed pro se "Motion to Dismiss, and Re-appoint Counsel." His appointed attorney from the public defender's office was Eugene Honea. On September 22, 2006, the trial court filed an Order stating that the attorney appointed from the public defender's office was no longer with the office, and a second attorney from that office "will serve as his new counsel . . . ." On October 11, 2006, Appellant filed a second pro se "Motion to Dismiss, and Re-appoint Counsel" requesting the trial court to dismiss the public defender's office from representing him. On October 12, 2006, Dana Ausbrooks, the second attorney from the public defender's office filed a motion to withdraw. Attorney Ausbrooks attached an affidavit stating, "During our visit in the attorney visitation room at the Williamson County Jail, [Appellant] became verbally abusive and physically aggressive towards me, and due to his action, I feared for my safety. . . . As a result of his conduct during our meeting, [Appellant] was placed in solitary confinement for thirty days."

On October 31, 2006, Appellant filed another "Motion to Dismiss, and Re-appoint Counsel" requesting the public defender's office be removed from his case. Also on October 31, 2006, the trial court heard argument regarding Attorney Ausbrooks's motion to withdraw. The trial court granted the motion to withdraw and appointed Wesley Stone. There was discussion during the hearing that the trial had been set for November 2006.

On March 29, 2007, Attorney Stone filed a motion to withdraw. Attorney Stone alleged that the relationship between Appellant and himself had become contentious. He also stated that they had had a heated argument. The trial court held a hearing on the motion on April 2, 2007. Attorney Stone reiterated his assertions in his motion. Appellant was allowed great latitude by the trial court in describing his grievances. At the conclusion of the hearing, the trial court stated that it found that Attorney Stone had done his job as an attorney. The trial court also granted several of Appellant's various requests and asked Attorney Stone to file the motions that Appellant wanted filed on his behalf. The trial court told Appellant that he had the option to keep Attorney Stone or represent himself at trial, which was scheduled for April 20, 2007. Appellant stated that he would like to keep

Attorney Stone, if Attorney Stone would still represent him. Therefore, at the conclusion of the hearing, the trial court denied the motion to withdraw.

However, on April 5, 2007, Attorney Stone filed a "Renewed Motion to Withdraw as Counsel." In the motion, Attorney Stone alleged that he met with Appellant until 10:00 p.m. on April 2, 2007, and also met with Appellant on April 4, 2007. According to Attorney Stone, the meetings became heated and, at the conclusion of the second meeting, Appellant told Attorney Stone that they were "done." On the same date, Attorney Stone filed several motions at Appellant's request. On April 17, 2007, the trial court held a hearing on Attorney Stone's renewed motion to withdraw. At the hearing, the trial court asked Appellant if he was asking again that his attorney be dismissed. Appellant replied in the affirmative. The trial court informed Appellant that its opinion with regard to Mr. Stone's representation had not changed and Appellant's other choice was to represent himself. Appellant responded, "if my only other option besides Mr. Stone as my counsel would be to represent myself, then that would be my decision, yes." At the conclusion of the hearing, the trial court denied Attorney Stone's motion.

On April 24, 2007, Appellant filed another "Motion to Dismiss and Re-appoint Counsel" with regard to Attorney Stone. The trial court held a hearing on May 3, 2007, for the purpose of hearing the motion to dismiss and reappoint counsel and several other motions. The trial court made the following findings:

> The Court heard many of these same reasons and, certainly, I don't mind the renewal of the motion, that's not a problem at all. But the Court heard many of these same reasons at the last hearing. And the Court, specifically, references its decision to the transcript of the last hearing. The fact is is [sic] that while I certainly appreciate, understand that there has been a breakdown in communication between [Appellant] and his attorney, Mr. Stone, that's plainly evident.
>
> The problem or the predicament that the Court finds itself in, is that [Appellant] retained counsel to begin with. That counsel was terminated. The Court was happy to appoint him another counsel, I think, Mr. Honea. That counsel was terminated. The Court was happy to appoint him another counsel, Ms. Ausbrooks. That counsel was terminated. The Court was happy to appoint him another private counsel, Mr. Stone. To terminate that counsel, the Court is very concerned that if we allow [Appellant] to terminate this counsel, appoint him another counsel, [Appellant] will based upon this – based upon this record in this court, and, again, I'm not saying anything bad about [Appellant], but just based upon what this Court has seen, there is no assurance that that [sic] counsel will behave in any manner that is acceptable to [Appellant].
>
> [Appellant], it's the impression of the Court, wants to control the minutia of the case. I think [Appellant] has a fundamental – has a fundamental

misunderstanding of the relationship between attorney and client. The attorney is not required to do everything that – everything and anything that the client asks. The attorney has to use independent judgment and is responsible to determine the overall strategy of the case. Certainly, he's required to accept the client's input. He's required to listen to the client and try to address whatever questions the client has.

But, again, the final decision with regard to everything but the client taking the witness stand, the final decision with regard to the total strategy of the case is up to the attorney. And I think that is the fundamental disagreement that [Appellant] has had with his attorneys. The Court does not believe that that's going to change by appointing another counsel, by appointing another counsel outside the county.

. . . [T]he Court is not going to be placed in the predicament of appointing another counsel and setting this matter three months farther out for trial in order for that counsel to get up to speed, only to have that counsel terminated on the heels of yet another trial date. That's not in the interest of justice. It's not in the interest of [Appellant], and I just don't believe that's the appropriate measure to be taken in this court.

I don't mean to put [Appellant] in a bad situation, but the fact is, is I'm going to give [Appellant] the same option that he had on the last court date. [Appellant] can represent himself or he can – he can keep Mr. Stone as counsel. Whatever he chooses to do is fine with the Court.

. . . .

[T]he Court has seen no indication, no independent indication other than the complaints by [Appellant] that Mr. Stone has done anything other than a competent job for his client. Quite frankly, this Court has probably met with Mr. Stone more independently with regard to this – with regard to this charge than I've met with any other counsel independently with regard to any other charges, that includes rapes and murders.

Mr. Stone has been diligent in his efforts to contact this Court and ask for special measures on behalf of his client to investigate his client's allegations. And I just haven't seen, other than what I've put on record, I just haven't seen there to be any misconduct on behalf of Mr. Stone . . . .

Appellant told the trial court that he would represent himself. The trial court appointed Mr. Stone to be "elbow counsel." Appellant proceeded to trial representing himself.

The right to assistance of appointed counsel for indigent defendants is guaranteed by both the United States and Tennessee Constitutions. *See* U.S. Const. amend. VI; Tenn. Const. art. I, § 9; *See also Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *State v. Small*, 988 S.W.2d 671, 673 (Tenn. 1999); Tenn. R. Crim. P. 44(a). "The right of an accused to assistance of counsel, however, does not include the right to appointment of counsel of choice, or to special rapport, confidence, or even a meaningful relationship with appointed counsel." *State v. Carruthers*, 35 S.W.3d 516, 546 (Tenn. 2000). Generally, a defendant's waiver of right to counsel occurs voluntarily, knowingly, and intelligently after the trial court advises the defendant about the fact that self-representation is fraught with danger and disadvantages. *Id.* However, "the right to counsel is not a license to abuse the dignity of the court or to frustrate orderly proceedings," therefore, a defendant may implicitly waive or forfeit his right to counsel if he "manipulates, abuses, or utilizes the right to delay or disrupt a trial." *Id.*

Our supreme court analyzed both implicit waiver and forfeiture of right to counsel in *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000). After reviewing opinions from courts in other states, the court determined that the differences between implicit waiver and forfeiture is "slight" and that an indigent defendant may implicitly waive or forfeit his right to counsel. *Id.* at 549. The court went on to hold that "an implicit waiver may appropriately be found, where, as here, the record reflects that the trial court advises the defendant the right to counsel will be lost if the misconduct persists and generally explains the risks associated with self-representation." *Id.*

In the case at hand, Appellant voluntarily moved to dismiss retained counsel and all four attorneys previously appointed to represent him. On more than one occasion, the motion to dismiss each attorney came at a time when a trial date was approaching. By the time Appellant was on his fourth lawyer, the trial court warned Appellant in two separate hearings, that if Appellant did not work with counsel and stop arguing with him, he would have to choose between self-representation and representation by Attorney Stone. Trial court also informed Appellant that if he chose to represent himself he would be subject to all rules of procedure as applied to attorneys at trial and that it would not be the best course of action. At the third hearing on the matter, after extensive warnings by the trial court, Appellant chose to represent himself.

We conclude that under the law as set out in *Carruthers*, Appellant implicitly waived his right to counsel by his behavior with regard to both retained and appointed counsel throughout his proceedings. It is clear from the record that Appellant was attempting to "manipulate[ ], abuse[ ], or utilize[ ] the right to delay or disrupt a trial." *See id.* at 546. Appellant is not entitled to relief with respect to this issue.

Judgment of Acquittal/Sufficiency of the Evidence

Appellant argues that the trial court erred in denying his motion for judgment of acquittal, at the conclusion of the State's proof, with regard to the possession of methamphetamine charge. The State argues that this issue is waived because Appellant failed to make proper citations to the

record. In the alternative, the State argues that the evidence is sufficient to support the conviction for possession of methamphetamine.

We agree with the State that Appellant has failed to cite to the record in his arguments regarding this issue. As stated above, Rule 27(a)(7) of the Tennessee Rules of Appellate Procedure provides that a brief shall contain "[an] argument . . . setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on." Tennessee Court of Criminal Appeals Rule 10(b) states that "[i]ssues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court." *See also Sanders*, 842 S.W.2d at 259(determining that issue was waived where defendant cited no authority to support his complaint). Although the failure to cite to the record is a basis for waiver, we will address this issue on the merits.

According to Tennessee Rule of Criminal Procedure 29(b):

> On defendant's motion or its own initiative, the court shall order the entry of judgment of acquittal of one or more offenses charged in the indictment, presentment, or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

This Court has noted that "[i]n dealing with a motion for judgment of acquittal, unlike a motion for a new trial, the trial judge is concerned only with the legal sufficiency of the evidence and not with the weight of the evidence." *State v. Hall*, 656 S.W.2d 60, 61 (Tenn. Crim. App. 1983). The standard for reviewing the denial or grant of a motion for judgment of acquittal is analogous to the standard employed when reviewing the sufficiency of the convicting evidence after a conviction has been imposed. *State v. Ball*, 973 S.W.2d 288, 292 (Tenn. Crim. App. 1998); *State v. Adams*, 916 S.W.2d 471, 473 (Tenn. Crim. App. 1995).

The law of this state is that an appellant waives any error by a trial court in denying a motion for a judgment of acquittal at the conclusion of the State's proof if the appellant goes on to introduce evidence following the denial of his motion. *Finch v. State*, 226 S.W.3d 307, 316-18 (Tenn. 2007); *Mathis v. State*, 590 S.W.2d 449, 453 (Tenn. 1979). In the case at hand, Appellant introduced proof after the trial court's denial of his motion for judgment of acquittal. Therefore, Appellant has waived this issue with regard to the denial of his motion for judgment of acquittal at the conclusion of the State's proof.

We now analyze whether the evidence as presented at the trial as a whole is sufficient to support Appellant's convictions. When an appellant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and "approved by the trial judge, accredits the testimony of the" State's witnesses

and resolves all conflicts in the testimony in favor of the State. *State v. Cazes*, 875 S.W.2d 253, 259 (Tenn. 1994); *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption "and replaces it with one of guilt." *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the appellant to demonstrate the insufficiency of the convicting evidence. *Id.* The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. *See* Tenn. R. App. P. 13(e); *Harris*, 839 S .W.2d at 75. In making this decision, we are to accord the State "the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." *See Tuggle*, 639 S.W.2d at 914. As such, this Court is precluded from reweighing or reevaluating the evidence when considering the convicting proof. *State v. Morgan*, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own "inferences for those drawn by the trier of fact from circumstantial evidence." *Matthews*, 805 S.W.2d at 779. Further, questions concerning the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual issues raised by such evidence, are resolved by the trier of fact and not the appellate courts. *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990).

Tennessee Code Annotated section 39-17-417 states, "(a) It is an offense for a defendant to knowingly: (1) Manufacture a controlled substance; (2) Deliver a controlled substance; (3) Sell a controlled substance; or (4) Possess a controlled substance with intent to manufacture, deliver or sell the controlled substance."

Deputy Rogers testified that when she searched Appellant, she found a tin box containing .8 grams of methamphetamine and $258 in cash. She told the jury that in her experience the amount of cash and the fact that she found methamphetamine would lead to the conclusion that Appellant was selling methamphetamine. In addition, when asked about the methamphetamine by Deputy Rogers, Appellant stated that he was taking the methamphetamine to his father. As stated above, the trier of fact, in this case the jury, makes all factual determinations. *See id.* There is ample evidence to support the conclusion that Appellant intended to deliver or resell the methamphetamine.

Therefore, this issue is without merit.

Thirteenth Juror Rule

Appellant argues that the trial court erred in finding that the evidence satisfied the State's burden of proof when acting as the thirteenth juror with regard to his conviction of possession of methamphetamine. The State argues, once again, that this issue is waived because Appellant did not make proper citations to the record. In the alternative, the State argues that the evidence was sufficient to support the jury's verdict and the trial court properly exercised its role as thirteenth juror.

Rule 33(f) of the Tennessee Rules of Criminal Procedure provides that "[t]he trial court may grant a new trial following a verdict of guilty if it disagrees with the jury about the weight of the evidence." Tenn. R. Crim. P. 33(f). "This portion of the Rule is the modern equivalent to the 'thirteenth juror rule,' whereby the trial court must weigh the evidence and grant a new trial if the evidence preponderates against the weight of the verdict." *State v. Blanton*, 926 S.W.2d 953, 958 (Tenn. Crim. App. 1996) (footnote omitted). The Tennessee Supreme Court has held "that Rule 33(f) imposes upon a trial court judge the mandatory duty to serve as the thirteenth juror in every criminal case." *State v. Carter*, 896 S.W.2d 119, 122 (Tenn. 1995). Moreover, the "approval by the trial judge of the jury's verdict as the thirteenth juror is a necessary prerequisite to the imposition of a valid judgment." *Id.* However, "Rule 33(f) does not require the trial judge to make an explicit statement on the record." *Id.* "Instead, when the trial judge simply overrules a motion for new trial, an appellate court may presume that the trial judge has served as the thirteenth juror and approved the jury's verdict." *Id.*

At the hearing on Appellant's motion for new trial, the trial court stated that the evidence supported the verdict and overruled Appellant's motion. In addition, we too have concluded that the evidence supports the jury's verdict. Therefore, we find that the trial judge exercised its role as the thirteenth juror and approved the jury's verdict that Appellant was guilty of possession of methamphetamine.

This issue is without merit.

Motion for Arrest of Judgment

Appellant argues that "the trial court erred by denying the defendant's motion for arrest of judgment related to the offense of evading arrest pursuant to the provisions of T.C.A. § 39-16-603." Again, the State argues that Appellant has waived this issue for failure to cite to authority and the record. In the alternative, the State argues that the evidence is sufficient to support Appellant's conviction of evading arrest.

We have noted that Appellant has failed to cite to the record throughout his brief. Nonetheless, we have addressed his issues where possible. However, Appellant's argument with regard to this issue consists of a quotation of the jury instruction given for evading arrest and a paragraph, without any citations to authorities or the record, arguing that "it is undisputed that the pursuit initiated and the subsequent traffic stop occurred outside of Williamson County."

Therefore, we conclude that this issue is waived. As stated above, Rule 27(a)(7) of the Tennessee Rules of Appellate Procedure provides that a brief shall contain "[an] argument . . . setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on." Tennessee Court of Criminal Appeals Rule 10(b) states that "[i]ssues which are not supported by argument, citation to authorities, or appropriate

references to the record will be treated as waived in this court." *See also Sanders*, 842 S.W.2d at 259.

We also point out that Appellant's statement that "it is undisputed that the pursuit initiated and the subsequent traffic stop occurred outside of Williamson County" is belied by the record. Deputy Rogers, who pursued Appellant, clearly testified that Appellant entered Williamson County, and after he entered the county, she activated her blue lights and began her pursuit of Appellant in and through Williamson County.

This issue is without merit.

Denial of Motion for New Trial

Appellant argues that the trial court erred in denying his motion for new trial because of "a combination of multiple errors by the trial court [which] resulted in [Appellant] being deprived of his right to a fair trial." The State argues that this issue is waived because Appellant has failed to cite to authority or make appropriate citations to the record.

Appellant raises several arguments to support this issue. Appellant includes a paragraph with a list of allegations. Appellant has included neither citations to the record nor citations to any supporting authority. As stated above, when an Appellant failed to cite to the record or authority, the issue is waived for purposes of appeal. Tenn. R. App. P. 27(a)(7); *Sanders*, 842 S.W.2d at 259.

Appellant also argues that the trial court erred in forcing Appellant to represent himself and by becoming impatient with Appellant during the trial. However, once again, Appellant has failed to make citations to the record. In addition, we have reviewed the record and find that the trial court in actuality was extremely patient with Appellant during his representation of himself during trial. Appellant was allowed great leeway in his examination of witnesses. The trial court's only comments were directed at conducting a timely trial. We find no evidence of the trial court showing "apparent displeasure." Because Appellant failed to cite to the record, this issue is waived. Tenn. R. App. P. 27(a)(7); *Sanders*, 842 S.W.2d at 259.

Appellant also argues that the trial court failed to issue subpoenas for officers at the scene who were shown on the videotape. There was much discussion before trial concerning the identity of the officers in question. Deputy Rogers did not know all of the officers who came to the scene because they were affiliated with different law enforcement agencies. There was an attempt by the State to enlarge the images of the videotape in order to read the officers' names on their badges. The State informed the trial court that there was insufficient detail in the videotape to make an identification. The State also informed the trial court that they requested help from the Tennessee Bureau of Investigation but were still unable to identify the officers. The trial court concluded that the State could not provide the names of the officers because there was no way to identify them. When the trial court and the State do not know the identity of the officers in question, we cannot find that the trial court erred in failing to issue subpoenas to unknown officers.

We find no cumulative error with regard to the trial court's denial of Appellant's motion for new trial and his right to a fair trial.

This issue is without merit.

CONCLUSION

For the foregoing reasons, we affirm the judgments of the trial court.

_____

JERRY L. SMITH, JUDGE